IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 149 OF 1991

1. Sau Akatai Annappa Gudalkar)
Age 60 years,)
)
2. Shri. Annappa Babu Gudalkar,)
Age 62 years, Both residents)
of Boriwade, Taluka Panhala,)
District Kolhapur) ...Appellants

Versus

The State of Maharashtra) ...Respondent

.....

Mr. Ganesh Gole i/b Mr. A.P. Mundargi, Advocate for Appellants

Mr. S.R. Shinde, A.P.P. for State.

.....

CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 14TH NOVEMBER, 2005

ORAL JUDGMENT:-

1. Through this appeal, the appellants i.e. original accused Nos. 1 and 2 have challenged the judgment and order dated 28.2.1991 passed by the learned 5th Additional Sessions Judge, Kolhapur in Sessions Case No. 119 of 1990. By the said judgment and order, the learned Sessions Judge convicted both the appellants under Sections 498-A and 304(B) r.w. 34 of I.P.C. For the offence under Section 498-A, both the appellants were sentenced to S.I. for one year and to pay fine of Rs.1,000/- i/d S.I. for

three months. For the offence under Section 304(B) r.w.34 of I.P.C. both the appellants were sentenced to S.I. for seven years. The learned Sessions Judge directed both the substantive sentences to run concurrently.

2. The prosecution case briefly stated is as under:-

. Deceased Savitri was the daughter of P.W.2 Hindurao Patil. Her marriage with Sarjerao who is the elder son of both the appellants took place, on 10.5.1988. Sarjerao was serving in the military and hence, after her marriage, Savitri was residing separately with Sarjerao. Both the appellants were residing at Boriwade, Tq. Panhala, District Kolhapur. It is the prosecution case that some time after the marriage, Savitri and Sarjerao were brought to the house of the complainant for *Manpan*. At that time, new clothes were offered to both of them. However, accused No.2 stated that no Manpan was offered to Tanaji i.e. younger brother of Sarjerao and hence, he asked Savitri and Sarjerao to return the new clothes.

. A few days before the death of Savitri, Tanaji, the younger brother of Sarjerao expired. On account of this, Savitri went to the house of her in-laws. At that time, there was a demand of "Bilwar" (a

bangle like gold ornament) of four tolas and Savitri was harassed on account of the same. On 24.5.1990, P.W.8 Ratnabai i.e. paternal aunt of Savitri and Sushila, wife of the complainant, went to the house of accused. Both of them stayed there. At that time Savitri informed them about the demand of Bilwar and harassment on account of the same. On the next day, both Ratnabai and Sushila returned back to their village at about 10.00 a.m. and they informed the complainant about the demand and harassment. On the very same day i.e. on 25.5.1990 at noon time, one Bandu Gudalkar, cousin brother of accused No.2 came to the house of the complainant and informed them that Savitri is suffering from acute stomach ache. On learning about this, P.W.8 Ratnabai, Sushila and others went to the village of accused to enquire. On reaching there, they came to know that Savitri fell in the well and died. All those persons returned back to the village of the complainant i.e. Borpadale. Thereafter, the complainant went to the village of the accused. He saw the dead body of Savitri. On the same day at night the complainant returned back to his village. On 27.5.1990 at about 4.00 p.m. post mortem came to be performed on the body of Savitri. As per the post mortem report the cause of death is asphyxia due to drowning. The F.I.R. came to be lodged on 27.5.1990 at about 9.00 p.m. by P.W.2 Hindurao Patil, who is the father of

deceased Savitri. Thereafter, investigation commenced. After completion of investigation charge sheet came to be filed.

3. In due course the case came to be committed to the Court of Sessions. Charge came to be framed against both the appellants i.e. original accused Nos. 1 and 2 under Section 498-A, 306 and 304(B) r.w. 34 of I.P.C. Both the accused pleaded not guilty to the said charges and claimed to be tried. Their defence is that of denial and false implication. It is the specific stand of the accused that the ground around the well was slippery on account of rain, hence, when Savitri went to the well to take water, she slipped and fell into the well. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted and sentenced both the appellants as stated in para 1 above. Hence, this appeal.

4. I have heard Mr. Gole, the learned advocate for the appellants and Mr. S.R. Shinde, learned A.P.P. for State. I have perused the judgment and order passed by the learned Sessions Judge as well as the evidence in the present case. After carefully considering the matter, I am of the opinion that this appeal deserves to be allowed.

5. The prosecution has examined ten witnesses in the present case. P.Ws. 3, 9 and 10 are police witnesses and their evidence is formal in nature. P.W.4 Dinkar Patil is the brother of the complainant. He has stated in his examination-in-chief that Savitri informed them that both the accused persons harassed her, however, in his cross examination, it has been brought on record that this statement is an omission. Hence, the evidence of this witness cannot be relied upon. P.W.6 Parubai Patil who is sister-in-law of the complainant, has stated that the accused No.1 i.e. mother-in-law of Savitri harassed her for "Bilwar" of four tolas, however, this statement has been proved to be an omission and hence, no reliance can be placed on the evidence of this witness.

6. P.W.1 Bapu Parit is the panch relating to the scene of offence. He is resident of the same village. His evidence does not help the prosecution case in any manner, however, two important facts in favour of the accused have been elicited from the evidence of this witness. The first is that the relations between Savitri and the accused persons were good and second is that on the day of the incident there was rain and on account of the said rain, there was mud around the well. Accused persons took water from that well for the purpose of drinking

and the steps of the well were slippery on account of mud. This evidence supports the case of the appellants had Savitri slipped and fell in the well.

7. P.W.5 Shamrao Parit is the neighbour of accused persons. He was the owner of the well in which body of Savitri was found. His evidence is of no use to the prosecution but in fact his evidence favours the accused persons. This witness has stated that the relations between accused persons and Savitri were good.

8. Thus, I am left with the evidence of only three witnesses i.e. P.W.2 the complainant Hindurao Patil, P.W.7 Hemant Patil and P.W.8 Ratnabai Patil. P.W.2 Hindurao Patil, in his evidence, has stated about three incidents. The first is that after one year of the marriage of Savitri and Sarjerao, they were brought to his house for *Manpan.* They were offered new clothes. Thereafter, Savitri was sent to the house of her in-laws. His son P.W.7 Hemant went alongwith Savitri to the village of her in-laws. When P.W. 7 Hemant returned from the house of the accused, he told P.W.2 Hindurao that accused No.2 told that no *Manpan* was offered to Tanaji (younger brother of Sarjerao) and hence, accused No.2 asked Savitri and Sarjerao to return the new clothes. In respect of the second incident the complainant P.W.2

Hindurao has stated that about a month prior to the incident, Savitri came to his house and showed him one injury on the finger on her hand and informed him that her mother-in-law pulled her from the stair case and beat her. In respect of the third incident, P.W.2 Hindurao has stated that few days before the incident, Tanaji, younger brother of Sarjerao died. On receiving the message, Savitri went to the house of the accused. On 24.5.1990 Sushila, the wife of the complainant and P.W.8 Ratnabai, the wife of the brother of the complainant went to the house of accused. They stayed there on that day. On the next day at about 10.00 a.m. they returned back to their village. The wife of the complainant told him that Savitri told her that there is demand of gold *Bilwar* of four tolas and there is harassment to Savitri on account of the said demand. On the very same day at noon time, one Bandu Gudalkar came to their village and informed them that Savitri is suffering from acute stomach ache. On receiving this message, the complainant i.e. P.W. 2 Hindurao and other persons rushed to the village of accused persons. On reaching there, they came to know that Savitri fell in the well and died. Thus, this witness speaks of three separate incidents. The first one is relating to *Manpan* wherein clothes were offered to Savitri and Sarjerao, second incident is that Savitri showed him injury on her finger and told him that her

mother-in-law pulled her from stair case and beat her and third incident is that on 24.5.1990 the complainant's wife Sushila and his sister-in-law P.W.8 Ratnabai, went to the house of accused persons to offer condolence on the death of their younger son Tanaji. On returning home the wife of the complainant informed him that Savitri told her that she was being harassed on account of demand of gold *Bilwar* of four tolas.

9. The evidence of P.W. 7 Hemant Patil who is the son of the complainant is on similar line as that of the complainant. He also speaks about the incident relating to *Manpan*, the injury to the finger of his sister i.e. deceased Savitri and about Savitri stating about the demand of Bilwar of four tolas. As far as the incident relating to *Manpan* is concerned, it is pertinent to note that the evidence of complainant relating to Manpan is an omission. The complainant Hindurao had not stated about the offering of new clothes to Savitri and Sarjerao and had not at all stated about offering of *Manpan* to Savitri and her husband. This omission has been brought out in the cross examination of this witness and also proved through P.W.9 A.S.I. Pole. From this omission it appears that no such incident of *Manpan* i.e. offering of clothes to Savitri and her husband had occurred. In such case the further

incident of accused persons saying that as no *Manpan* was offered to Tanaji, Savitri and her husband should return the clothes does not seem possible. Thus, I find that the first incident relating to occasion of *Manpan* does not seem to be reliable.

10. As far as the second incident is concerned i.e. Savitri showing the complainant an injury on her finger and stating that her mother-in-law pulled her from the stair case and beat her, this incident also appears to be little doubtful. P.W.2 Hindurao has categorically admitted that no injury was seen on the person of Savitri except the injury on the finger when Savitri informed him that her mother-in-law beat her. In the cross examination, the complainant has admitted that the injury on the finger was sustained by Savitri when she was residing with her husband at the military base. In the light of this evidence, it becomes clear that the injury was not sustained on account of any act by appellant No.1.

11. The last incident is about the demand of Gold Bilwar of four tolas and harassment on account of the same to Savitri. One must bear in mind that Tanaji was the younger son of both the accused persons. Tanaji was a young man who was perhaps in his late twenties or early thirties. Accused persons had only two sons. Tanaji was the younger of the two sons.

In such case when the younger son of both the accused persons had died just few days before it would hardly be expected that the accused persons would make demand of gold Bilwar of four tolas for the first time from Savitri. The accused persons were aged 60 and 62 years respectively at that time. The period during which the demand was alleged to have made and the harassment occurred was during the period of mourning on account of death of Tanaji. In fact P.W.8 Ratnabai who is the aunt of Savitri and Sushila, the mother of Savitri had gone to the house of accused to offer condolence in respect of death of Tanaji when they were informed about ill-treatment and harassment on account of demand of gold Bilwar of four tolas.

12. It is the prosecution case that the demand and harassment to Savitri in relation to Bilwar of four tolas is supposed to have taken place when Savitri went to the house of accused persons on account of death of her younger brother-in-law Tanaji. In this connection, it is pertinent to note that Savitri was not residing with the accused persons but she was residing with her husband who was serving in the military. It was on account of death of Tanaji, the younger brother-in-law of Savitri which took place few days before the incident, that Savitri went to the house of her in-laws. It is the prosecution case

that when Savitri went to the house of her in-laws on account of death of Tanaji, the demand and harassment was made. In the present case, it is pertinent to note that death of Savitri took place on account of drowning on 25.5.1990. The complainant came to know about this fact on the very same day and in the evening he went to the village of the accused persons. However, no complaint was made by him against the accused persons on that day. So also on 26.5.1990, no complaint has been made by him to the police. In fact P.W.3 Balu Shinde who is the Police Patil of the village gave Vardi on 25.5.1990 at about 5.00 p.m. in which he has stated that he was informed that Savitri slipped into the well and died. Thus, at that point of time it appears that neither the complainant P.W.2 Hindurao nor any one else had made any complaint to the Police Patil or expressed any suspicion about the death. The report came to be lodged by the complainant only on 27.5.1990 at 9.00 p.m.. Thus, it is seen that there is delay in lodging the F.I.R. No plausible explanation has been given by the prosecution in respect of the said delay. This aspect of delay raises grave doubt in the mind in respect of veracity of the prosecution case.

13. It is also pertinent to note that Savitri was residing with her husband at a different place and

she was not forced to reside with her in-laws. She had gone to the house of her in-laws only on account of death of Tanaji. Looking to the circumstances, it does not seem probable that any demand for gold Bilwar could have been made or any harassment meted to Savitri on that count shortly after the death of Tanaji.

14. Looking to the evidence on record and the glaring aspects of delay in lodging the F.I.R., I do not find the evidence adduced by the prosecution to be reliable and trustworthy. In this view of the matter, the conviction and sentence of both the appellants as imposed by the learned 5th Additional Sessions Judge, Kolhapur in Sessions Case No. 119 of 1990, is set aside. Both the appellants-accused are acquitted for the offence under Sections 498-A and 304(B) r.w. 34 of I.P.C. The appellants are on bail, their bail bound stand shall cancelled. If the fine amount is paid by the appellants, the same be refunded to them.

15. Appeal allowed.

*****